IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 31 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARABHAI PVT. LTD. - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Respondent(s)

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Appearance :
MR RK PATEL for Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Income Tax Appellate Tribunal, Ahmedabad Bench “B” in relation to Income Tax Appeal No.5206/Ahd/1991 relating to accounting assessment year 1978-79, has referred the following question to the High Court in its opinion.

> “Whether on the facts and in the circumstances of the case the Tribunal was justified in confirming the disallowance of repair expenses made by the assessee to the tune of Rs.1,81,635/-?”

2. The short facts necessary for disposal of the present Reference are that the assessee has incurred repairs expenses to the tune of Rs.2,23,553/- during the relevant previous year. The ACIT disallowed the expenditure to the tune of Rs.1,81,635/- and the order was confirmed by CIT (Appeals). The order passed by the Assessing Officer and upheld by the CIT (Appeals) was confirmed by the Tribunal. While confirming the said order, the Tribunal relied upon its earlier orders, which were in the same assessee's matter in ITA Nos.2100 and 2101/A/80 for the assessment years 1976-77 and 1977-78 respectively. It is to be noted that in relation to the

very same dispute between the same parties, for the assessment year 1974-75 and 1975-76, in a reported judgment of this Court [2003 (263) ITR 197], the Court had decided the very same question in favour of the revenue. The Court has observed that the Tribunal was justified in accepting the income from complex letting as income from business and the Tribunal was justified in allowing 1/6th repairs of the properties in question in place of repairs to building at Rs.2,08,118.00 and Rs.1,94,476.00 for the assessment year 1975-76.

3. In view of the said judgment, we must hold that the Assessing Officer was fully justified in granting 1/6th of the income towards repairs. The Commissioner, Income Tax (Appeals) and the Tribunal were also justified in holding against interest of the assessee. We answer the question against the assessee and in favour of revenue. The Reference stands disposed of. No costs.

(R.S.GARG,J.)

(M.R.SHAH,J.)

shekhar/-